



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Alexa Jeffress
Director, Economic &
Workforce Development
Department

SUBJECT: 12th Street Remainder -- Sixth DDA
Amendment

DATE: February 1, 2022

City Administrator Approval

Date: Feb 16, 2022

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance To Authorize A Sixth Amendment To The Disposition And Development Agreement Between The City Of Oakland And Lakehouse Commons, LLC And Lakehouse Commons Affordable Housing, LP, To (1) Extend The Outside Date (Retroactively, If Necessary) And Related Performance Deadlines In Exchange For Monthly Payments Of An Additional Deposit of \$15,000 and An Extension Fee of \$15,000 And (2) Require Reappraisal Of The Property And An Update Of The Purchase Price; And Adopt California Environmental Quality Act Findings

EXECUTIVE SUMMARY

Staff recommends that the City Council take action on a request from LakeHouse Commons, LLC (Market Rate Developer), an affiliate of UrbanCore Development, LLC (UrbanCore), and LakeHouse Commons Affordable Housing LP (Affordable Housing Developer), an affiliate of the East Bay Asian Local Development Corporation (EBALDC) (collectively, referred to as the "Developers") to authorize a Sixth Amendment to the Disposition and Development Agreement (DDA) between the City of Oakland (City) and the Developers for the sale and development of the "12th Street Remainder Parcel", a 0.92-acre City-owned parcel of vacant land located between East 12th Street and 2nd Avenue near Lake Merritt (Property).

The proposed project consists of 360 mixed-income residential units, including 108 units (30 percent of total project units) at below-market rent, 90 of which will be affordable to very low and low-income households earning 30 percent to 60 percent of area median income (AMI), and 18 of which will be affordable to moderate-income households earning up to 120 percent of AMI (Project).

City Council
February 15, 2022

The purchase price for the Property is currently set at \$8 million, based on a fair market value appraisal of the property from March 2016. \$4.7 million of the price is attributable to the Market Rate Developer and \$3.3 million is to be financed through a City seller carryback loan to the Affordable Developer.

The DDA terminates on February 15, 2022 (Outside Date) if the sale of the Property does not occur by that date. The Developers will not be able to meet this deadline and have requested a nine-month extension of the DDA term, from February 15, 2022 to November 15, 2022, and certain performance deadlines. If the City Council chooses to grant an extension, staff recommends the following conditions as part of the approval:

- (1) grant a request for a nine-month extension to the Outside Date, from February 15, 2022 to November 15, 2022, retroactively, if necessary, and to all related performance deadlines of the Project schedule (such as pre-closing requirements, and construction start and completion dates), in exchange for Developers' payments each month of (a) an additional deposit of \$15,000 (to be applied toward the purchase price at closing or retained by City as liquidated damages in accordance with Section 3.1.4 of the DDA) (Additional Deposit), and (b) an extension fee of \$15,000 (Extension Fee) until conveyance of the Property by the City to the Developers (Close of Escrow); and
- (2) require a reappraisal of the Property and update of the purchase price.

BACKGROUND/LEGISLATIVE HISTORY

In 2016, pursuant to the State Surplus Lands Act (SLA) the City was authorized to enter into a contract with a developer/buyer for a project that includes a minimum of 15 percent of units that are affordable to lower-income households. The City selected the UrbanCore/EBALDC proposal (Resolution No. 86056 C.M.S) because it:

- maximized housing unit density on the Property,
- maximized affordable housing production on-site for a range of income levels (30 percent to 120 percent of AMI), while minimizing City and other public subsidy costs for those below market rate units,
- offered the greatest number of family-sized units (2- and 3- bedrooms),
- provided shared access to all residents to 100 percent of the building's common spaces,
- offered an option for a 100-percent union labor project, and
- offered the required upfront payment to the City of \$4.7 million.

The DDA was executed on February 15, 2017, by the City and UrbanCore, as the Market-Rate Developer, and LakeHouse Commons Affordable Housing LP, as the Affordable Housing Developer (Ordinance No. 13382 C.M.S.) (Original DDA). On October 13, 2017, UrbanCore assigned its rights and obligations under the DDA to a new entity, LakeHouse Commons, LLC, comprised of UrbanCore and its capital partner, National Real Estate Advisors, LLC (Resolution No. 86849 C.M.S.) (Assignment).

On December 11, 2018, the City Council adopted Ordinance No. 13514 C.M.S. to authorize a first amendment to the DDA to (1) extend the closing date and related outstanding performance deadlines, and (2) provide City financing of 50 percent of the Property purchase price

attributable to the Market Rate Project by taking back a promissory note from the Market Rate Developer in the amount of \$2,350,000.

On November 14, 2019, the City Council adopted Ordinance No. 13566 C.M.S. to authorize a second amendment to the DDA to, among other things: (1) extend the closing date from November 15, 2019 to August 15, 2020; (2) extend related performance deadlines; and (3) remove the option for City financing of 50 percent of the land sales price attributable to the Market Rate Developer's portion of the Project.

On December 10, 2019, the City Council adopted Ordinance No. 13572 C.M.S. to authorize a third amendment to the DDA to, among other things: (1) incorporate additional community benefits, environmental conditions, and construction mitigation measures; (2) redirect the land sales proceeds to the Affordable Housing Trust Fund; and (3) authorize the City Administrator to extend the closing date and related performance deadlines up to an additional six months.

On August 15, 2020, pursuant to an administrative amendment authorized by Ordinance No. 13572 C.M.S., the closing date and related performance deadlines were extended by three months from August 15, 2020 to November 15, 2020.

On November 16, 2020, pursuant to a second administrative amendment authorized by Ordinance No. 13572 C.M.S., the closing date and related performance deadlines were extended by an additional three months from November 15, 2020 to February 15, 2021.

Section 12.8 (Enforced Delay) of the Original DDA authorized by Ordinance No. 13382 C.M.S. permits dates of performance under the DDA to be extended in writing by the City and the Developers for an aggregate of up to 12 months if delays are due to a number of qualifying events, including an epidemic and market conditions and/or lack of financing directly resulting from the epidemic.

By letter dated February 11, 2021 signed by the City Administrator and initialed by Developers, pursuant to Section 12.8 of the DDA, the dates of performance under the DDA were extended by six months to August 21, 2021.

By letter dated August 15, 2021 signed by the City Administrator and initialed by the Developers, pursuant to Section 12.8 of the DDA, the dates of performance under the DDA were extended by the remaining six months to February 15, 2022.

The term "DDA" means the Original DDA dated February 15, 2017, as assigned on October 13, 2017, and amended on February 15, 2019, November 15, 2019, and December 10, 2019, and as further revised by administrative amendments on August 15, 2020 and November 16, 2020, and by an enforced delay extension letter dated February 11, 2021 and August 15, 2021.

The Project consists of 360 residential units, of which 108 (30 percent) will be restricted to below-market rents. The Project will include two buildings (LakeHouse North and LakeHouse South) sharing a common entrance, a podium garage, and other amenities. The following table illustrates the unit mix and affordability level of the Project, as well as other building details:

Table 1: Project Description

	LakeHouse Commons			
	<i>LakeHouse North "Tower"</i>	<i>LakeHouse South "Mid-Rise"</i>	<i>Total</i>	<i>% of Total</i>
Affordable Units @ 30-60% of AMI	0	90	90	25%
Affordable Units @ 100-120% of AMI	18	0	18	5%
Market Rate Units	<u>252</u>	<u>0</u>	<u>252</u>	<u>70%</u>
Total Residential Units	270	90	360	100%
Parking Spaces for Cars/Bikes (Podium Garage on Floors 1 & 2 and Two Underground Floors)	192	29	221 car spaces 216 bike spaces	
Height	26 stories 267-ft tall	5 stories 76-ft tall		

The City Administrator is authorized to use \$300,000 of the land sales proceeds for a Community Benefits Program highlighted as follows (Resolution No. 87455 C.M.S.):

- a) \$50,000 to Catholic Charities of the East Bay for a tenant-legal rights and education program(s);
- b) \$30,000 to the Lake Merritt Business Association's fiscal agent or the City for a study to create a business improvement of community benefits district for the Eastlake neighborhood;
- c) \$150,000 to Oakland Parks and Recreation Foundation or the City for the restoration work at San Antonio Park or construction of a recreational facility in City Council District 2;
- d) \$50,000 to Keep Oakland Clean & Beautiful or a qualified third-party for graffiti abatement and neighborhood beautification of the Eastlake Neighborhood; and
- e) \$20,000 to Urban Releaf for the purchase and maintenance of trees in City Council District 2, including the Eastlake Neighborhood.

The Project was approved by the Planning Commission on June 15, 2016. The planning approvals lapsed on June 22, 2019. On September 18, 2019, the Planning Commission unanimously reinstated the planning approvals. The Developers submitted building permit applications for the Project in February 2020, but a final building permit issuance is pending outstanding conditions of approval the Developers have yet to meet.

ANALYSIS AND POLICY ALTERNATIVES

The Developers have made a large investment in the Project thus far and continue to cite rising construction costs as a challenge to Project feasibility as well as the ongoing negative impacts of the COVID-19 pandemic on the real estate market and the ability to security financing on residential projects.

Staff seeks direction from the City Council as to how to proceed with the Developers' request for an extension to the Project's performance deadlines and Outside Date. If the City Council chooses to amend the DDA to allow an extension, staff recommends the following conditions:

1) Nine-Month Extension to the Outside Date

The Developers need more time to secure financing for both Project components. Like other developers pursuing residential projects in Oakland in the current market, the Market-Rate Developer has had difficulty securing all debt and equity financing for the high-rise, exacerbated by the COVID-19 pandemic. In addition, the Affordable Housing Developer needs more time to obtain funding for affordable housing from the State of California.

2) Extension Fee and Additional Deposit

Staff further recommends that (a) the Developers be asked to pay the Extension Fee and Additional Deposit each month, and (b) the City commission a reappraisal of the Property and update of the purchase price. Submission of the payment of the Extension Fee and Additional Deposit shall be the sole responsibility of the Developers, due on the first of each month; staff shall not be required to issue an invoice to trigger payment.

If the City does not take this action to amend the DDA, the DDA will terminate and the City will not retain the potential for this designed and approved 360-unit residential project with 30 percent of the units available at below market rate rents targeted to very-low to moderate income families, 729 union construction jobs, over \$600,000 in ongoing annual tax revenue to the City, and \$4,700,000 or an updated amount in land sale proceeds, depending on the outcome of the reappraisal of the Property. If the DDA expires, the City will need to initiate a new project on the site, including redoing the SLA process and all necessary project approvals. It could be more than five years before any new housing units are built on the site.

Approval of the requested action advances the Citywide priority of **housing, economic, and cultural security**.

FISCAL IMPACT

This Sixth Amendment, if approved as recommended by staff, authorizes the City to receive funds in the form of Additional Deposit and Extension Fee payments from the Developers each in the amount of \$15,000 per month, during the nine-month DDA extension period. As was the case with the First Good Faith Deposit and previous Additional Deposit payments authorized in the Second Amendment to the DDA, the Developers will place the Additional Deposit Payment into the Project's existing escrow account. Pursuant to the terms of the DDA, the Additional Deposits, plus accrued interest, shall be credited back to the Developer against the Purchase Price at the time of conveyance of the Property by the Outside Date. At the time of sale, the Additional Deposit, together with the balance of the purchase price, will be deposited into the City's Affordable Housing Trust Fund (1870), Housing Development Organization (89929), for a project(s) to be determined for housing development activities. Should the Property not be conveyed to the Developers by the Outside Date, the City will retain the Additional Deposit payments as liquidated damages in accordance with Section 3.1.4 of the DDA, at which time it will be deposited into Miscellaneous Capital Project Fund (5999), Central District Redevelopment Organization (85245), 12th St Parcel Project (1003826), Downtown Redevelopment Program (SC13), and appropriated into spendable accounts to be determined.

The monthly Extension Fee will be deposited into Miscellaneous Capital Project Fund (5999), Central District Redevelopment Organization (85245), 12th St Parcel Project (1003826),

Downtown Redevelopment Program (SC13) for purposes of reimbursing the City for its project-related staff costs and third-party expenses, and appropriated into spendable accounts to be determined.

The sale of the Property will yield at least \$4,700,000 in land sales proceeds, or an updated amount, of which at least \$4,400,000 which will be deposited into the Affordable Housing Trust Fund (1870), Housing Development Organization (89929), for a project to be determined for housing development activities. Pursuant to Ordinance No. 13566 C.M.S., the Council had previously authorized the City Administrator to appropriate \$300,000 of the sales proceeds for purposes of a Community Benefits Program. If a reappraisal of the Property exceeds the current Property sales price of \$8,000,000, the sales price will increase by that amount and those proceeds will be deposited in the same Fund and coding block referenced above.

PUBLIC OUTREACH / INTEREST

Developers conducted public outreach for this Project as required by the Bureau of Planning and the Exclusive Negotiation Agreement.

Pursuant to Section 2.1.7.4 of the DDA, Developers are required to hold at least one community meeting regarding mitigation of the impact of Project construction on the neighboring community. Developers will also consult with the Oakland Unified School District to agree on a plan for the implementation of mitigation measures that will address construction impacts on the District. A community meeting was held with Council District 2 Office on the evening of October 2, 2019, at Dewey Academy.

COORDINATION

Staff coordinated with the Office of the City Attorney and the Finance Department in the preparation of this report.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed Project would transform vacant underutilized land into a high-density residential development that will provide much-needed housing units, a modest amount of neighborhood-serving retail, and further stimulus to the local economy. Development of the site will produce 729 construction jobs and a yet-to-be determined number of permanent jobs for staffing a café and property management. Staff estimates that the Project will generate \$45,000,000 from property tax and \$21,000,000 from business license tax over 66 years, together with other tax benefits from parking tax and sales tax. In addition to the upfront land sale proceeds, the sale of the Property at \$8,000,000 will generate \$200,000 in City transfer taxes.

Environmental: The proposed Project is expected to maximize the potential use of the land with an environmentally-sensitive design, use of materials and operating standard. The proposed high-density development near a regional transportation hub will likely encourage residents and café patrons to use BART and AC Transit and reduce automobile reliance, which will decrease the use of fossil fuels and resulting greenhouse gas emissions. The Market Rate

Developer will fund the cost to design, construct and provide ongoing maintenance for the adjacent open space parcel owned by the City.

Race & Equity: The Project will be built by a development team consisting of a Black-led development firm, UrbanCore LLC, and an Asian American-led nonprofit, EBALDC. The Project will promote access to housing opportunities for housing-insecure Oaklanders, who are predominantly people of color, by providing affordable housing for 108 households, which could serve more than 150 people. The Project additionally will include neighborhood-serving ground-floor retail. The Project's Community Benefits Program will provide \$300,000 to organizations and uses serving residents of the immediate Eastlake neighborhood, who are predominantly people of color (approximately 79%). This includes a variety of anti-displacement and neighborhood beautification initiatives that promote racial and environmental equity: creating a business improvement or community benefits district, restoring work at San Antonio Park, local tree canopy maintenance and expansion, and supporting larger tenant legal rights programs.

California Environmental Quality Act (CEQA)

On a separate and independent basis, the anticipated environmental effects of the Project have been adequately evaluated by the Lake Merritt Station Area Plan Final Environmental Impact Report (Final EIR) (certified November 2014); The Project is consistent with a Community Plan, General Plan or Zoning under Section 15183 of the State CEQA Guidelines (Projects consistent with a Community Plan, General Plan or Zoning); and the Project complies with Section 15183.3 of the State CEQA Guidelines (Streamlining for Infill Projects); further, the Project is Categorically Exempt under Section 15332 of the State CEQA Guidelines (In-Fill Development Projects).

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt An Ordinance To Authorize A Sixth Amendment To The Disposition And Development Agreement Between The City Of Oakland And Lakehouse Commons, LLC And Lakehouse Commons Affordable Housing, LP, To (1) Extend The Outside Date (Retroactively, If Necessary) And Related Performance Deadlines In Exchange For Monthly Payments Of An Additional Deposit and An Extension Fee, and (2) Require Reappraisal Of The Property And Update The Purchase Price; And Adopt California Environmental Quality Act findings.

For questions regarding this report, please contact Jens Hillmer at (510) 238-3317.

Respectfully submitted,



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